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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,833

05/31/2005

Tadato Onodera

232658

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23460

7590

02/11/2008

LEYDIG VOIT & MAYER, LTD  
TWO PRUDENTIAL PLAZA, SUITE 4900  
180 NORTH STETSON AVENUE  
CHICAGO, IL 60601-6731

EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/522,833	<b>Applicant(s)</b> ONODERA ET AL.	
	<b>Examiner</b> Elizabeth M. Cole	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,11-14,19-37 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 2,5-7,11-14,19-32,34-37 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 is rejected under 35 U.S.C. 103(a) as obvious over Driggars, U.S. Patent No. 6,253,582 in view of Suzuki et al, U.S. Patent No. 5,331,032. Driggars discloses a knitted fabric comprising yarns which are formed from air jet spun polyester. The fabric has a pilling resistance of greater than 3. See abstract. Driggars does not disclose the claimed UV shielding rate or visible ray transmittance. However, when the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02. With regard to the limitation that the fiber has less than 1% by weight of titanium dioxide, Driggars does not disclose that the fiber comprises any titanium dioxide and therefore the fiber of Driggars meets the limitation comprising less than 1% by weight. Driggars differs from the claimed invention because it does not teach that the polyester yarn comprises hollow fibers. Suzuki teaches a polyester material which can be formed into fibers. Suzuki teaches that the fibers can be formed into hollow, side by side or multi-lobal fibers. See col. 6, lines 45 –57; col. 21, lines 32-67. The fibers have excellent antistatic, absorbency and

soil releasing properties. The polyester fibers have excellent resistance to pilling. See col. 23, lines 41-44. The polyester fibers can have a post treatment applied to them to make the fibers hydrophilic by graft polymerizing a hydrophilic monomer onto the fibers. See col. 23, lines 45-56. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed hollow polyester fibers in the polyester fiber yarn of Driggars as taught by Suzuki, with the expectation that such fibers would have excellent antistatic, absorbency and soil releasing properties.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Driggars in view of Suzuki, as applied to claims above, and further in view of JP 52063475. With regard to the limitation that the yarn comprises both graft polymerized polyester fibers and non-graft polymerized polyester, neither Driggars nor Suzuki teach this combination. However, JP '475 teaches that yarns can be formed which comprise both the graft polymerized polyester and the non-graft polymerized polyesters. Therefore, it would have been obvious to have employed both types of polyester fibers in a yarn as taught by JP '475, in view of the teaching that both graft polymerized and non-graft polymerized fibers were known in the art and that it was known in the art to combine both types of fiber in a single yarn.

4. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Driggars in view of JP 08-144,152. Driggars differs from the claimed invention because it does not teach using crimped fibers in the spun yarn, or using low shrinkage fibers. Driggars does not teach employing a combination of high and low shrinkage fibers and does not teach shaped fibers or hollow fibers. JP '152 teaches that in forming yarns for fabrics

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which have an opaque appearance and a cool and comfortable feeling, that spun yarn, staple yarns, yarns having irregular cross sections, yarns having both a high and low shrinkage fibers and crimped yarns can be employed. See paragraphs 0008, 0013, 0018. of the machine translation. JP '152 teaches that air textured polyester yarns can be used. See paragraph 0020. It would have been obvious to have employed crimped yarns, staple yarns, yarns having irregular cross sections and/or yarns having both a high and low shrinkage fibers to form the fabrics of Driggars, motivated by the expectation that this would improve the appearance and hand of the fabrics. The person of ordinary skill in the art would have been able to select the particular amounts and blends of the different types of fibers which were all known in the art to be useful in forming polyester fabrics having excellent pilling resistance and excellent aesthetic properties.

5. Applicant's arguments filed 12/6/07 have been fully considered but they are not persuasive. Applicant argues that Driggars does not anticipate or render obvious claim 1 as amended. A new rejection is set forth above in view of the amendments to claim 1.

6. Applicant argues that none of the cited art teaches a yarn comprising both the graft polymerized polyester and the non-graft polymerized polyester. This argument is moot in view of the new grounds of rejection.

7. Applicant argues that Driggars and Suzuki do not teach a combination of side by side crimped staple fiber and a low-shrinkage staple fiber. This argument is moot in view of the new rejection above, in view of the fact that JP '152 teaches such combinations.

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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

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/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

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